

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/4/2022

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

-against-

AIRBORNE WIRELESS NETWORK, *et al.*,

Defendants.

21 Civ. 01772 (CM)

5/4/2022
Airborne has finally
filed an answer (Dkt #
151). This case will
be referenced on
6/9/2022
at 10:30 am

**REQUEST BY PLAINTIFF SECURITIES AND EXCHANGE COMMISSION FOR
CLERK TO ENTER DEFAULT AGAINST DEFENDANT AIRBORNE WIRELESS
NETWORK PURSUANT TO FED. R. CIV. P. 55(a)**

Plaintiff Securities and Exchange Commission ("SEC") hereby requests that the Clerk of this Court, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Local Civil Rule 55.1, enter a default against defendant Airborne Wireless Network ("Airborne") for failure to answer the complaint filed in this action.

As set forth in the accompanying Declaration of Nicholas C. Margida, on March 3, 2021, the SEC, pursuant to Fed. R. Civ. P. 4(d), requested that Airborne waive service of the summons and complaint in this case, and provided to counsel for Airborne a written Waiver of the Service of Summons. On March 4, 2021, counsel for Airborne signed the Waiver of the Service of Summons, which was filed with the Court the same day. (ECF No. 10). Pursuant to the signed waiver and Fed. R. Civ. P. 4(d)(3), Airborne's answer or other responsive pleading was due May 3, 2021.

On April 29, 2021, Airborne filed a consent motion for a one-week extension for it to answer or otherwise plead in response to the SEC's complaint. (ECF No. 43). The Court

granted that motion the next day, and Airborne was then required to file its answer or other responsive pleading on or before May 10, 2021. (ECF No. 44). Airborne filed a motion to dismiss pursuant to Fed. R. Civ. P. 12 on May 10, and later on July 20, 2021, filed a corrected motion to dismiss. (ECF Nos. 64, 89). On October 7, 2021, the Court entered an order denying Airborne's motion to dismiss and all other pending motions to dismiss (ECF No. 103), and pursuant to Fed. R. Civ. P. 12(a)(4)(A), Airborne's answer deadline was moved to October 21, 2021. On October 15, 2021, defendants Kalistratos Kabilafkas and Timoleon Kabilafkas filed a letter motion requesting a one-week extension to file their respective answers and requested, with SEC counsel's agreement, that such extension apply to all other defendants' answer deadlines, including that of Airborne. (ECF No. 105). The next day the Court entered an order granting the motion, and pursuant to that order Airborne's answer deadline was extended to October 28, 2021. (ECF No. 106). Airborne did not file an answer to the SEC's complaint on or before October 28, 2021, and still has not done so as of the date of this filing.

WHEREFORE, plaintiff SEC requests that the Clerk of Court enter a default against defendant Airborne Wireless Network, pursuant to Fed. R. Civ. P. 55(a), and enter the proposed the proposed Clerk's Certificate of Default attached hereto, pursuant to Local Civil Rule 55.1.

Dated: December 22, 2021

Respectfully submitted,

/s/ Nicholas C. Margida
Nicholas C. Margida (admitted *pro hac vice*)
SECURITIES AND EXCHANGE COMMISSION
Division of Enforcement
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Counsel for Plaintiff
U.S. Securities and Exchange Commission

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2021, I electronically filed the foregoing Request for Default and attached Declaration and proposed Certificate of Default, and provided the foregoing to all counsel of record in this case via the CM/ECF system. I further certify that I sent the foregoing by email to Robert Knuts, counsel for defendant Airborne Wireless Network, at the following email address: rknuts@shertremonte.com.

/s/ Nicholas Margida
Nicholas C. Margida

Counsel for Plaintiff
U.S. Securities and Exchange Commission